

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE JAMES POWERS,

Defendant-Appellant.

---

UNPUBLISHED

May 11, 2006

No. 259606

Macomb Circuit Court

LC No. 2004-001125-FC

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DURAN ALAN SNIDER,

Defendant-Appellant.

---

No. 259607

Macomb Circuit Court

LC No. 2004-001819-FC

Before: Jansen, P.J., and Neff and Zahra, JJ.

PER CURIAM.

Defendants Willie James Powers and Duran Alan Snider were tried jointly before a single jury. Both defendants were convicted of assault with intent to do great bodily harm less than murder, MCL 750.84,<sup>1</sup> and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant Powers was sentenced to a prison term of 24 to 120 months for the assault conviction, and a consecutive two-year term for the felony-firearm conviction. Defendant Snider was sentenced to a prison term of 23 to 120 months for the assault conviction, and a consecutive

---

<sup>1</sup> It appears from the record that defendant Powers was charged with assault with intent to commit murder, MCL 750.83, and assault with intent to do great bodily harm less than murder, MCL 750.84. It appears that defendant Snider was charged with assault with intent to commit murder, MCL 750.83, assault with intent to do great bodily harm less than murder, MCL 750.84, and felonious assault, MCL 750.82.

two-year term for the felony-firearm conviction. Both defendants appeal as of right, and we affirm.

## I. Basic Facts

In the early morning of February 16, 2004, the victim, Andre Billings, along with Courtenay Caldwell, Xavious Hudson, Deonta Gillson, Lamar Malone, and Torian Owens were at a Warren bowling alley. Caldwell, who knew defendant Powers and was familiar with defendant Snider, testified that both defendants were with another group in the bowling alley that evening. Gillson identified defendant Snider as being inside the bowling alley as well. The victim testified that, at some point, he had an altercation with defendant Snider. Caldwell testified that she witnessed part of the argument between defendant Snider and the victim. Caldwell described defendant Snider as loud, excited, and confrontational. Bowling alley security guards escorted defendants' group outside, while the victim and his group continued to bowl.

Shortly thereafter, the victim and his group left the bowling alley. Witnesses testified that two cars then pulled up to the bowling alley. Owens testified that he saw a girl approach one of the cars and that he then overheard a dispute. The victim explained that two men exited the car, brandished guns, and after a brief exchange, pointed the guns in his direction. The victim identified defendant Powers as a third man who pointed a gun from inside the car. He did not specifically identify defendant Snider by name. However, the victim testified that the men in the cars were "the same guys that [they] had just got into it with at the bowling alley." Numerous shots were fired in the direction of the victim and his group, and the victim was hit several times. Upon searching the scene, the police found numerous shell casings, bullets, and bullet fragments on the ground. The parties stipulated that the evidence was consistent with three different firearms being used.

Witnesses at the scene testified regarding their identification of the shooters. At trial, Hudson identified defendant Snider as one of the men who had a gun, and indicated that defendant Snider was with the group involved in the verbal altercation in the bowling alley. Hudson had also previously identified defendant Snider in a photographic lineup. Caldwell identified defendant Powers as having stood alongside one of the cars and as having pointed a gun. Caldwell also identified Snider from a photographic lineup as being with defendant Powers that evening. Gillson identified defendant Snider from a photographic lineup as one of the men who had exited the car and had held a gun. She testified that all three shooters had been inside the bowling alley. Owens testified that the men in the cars had previously been inside the bowling alley. Malone testified that he saw men exit a car, and "they just start pointing guns and starting shooting." Although Malone could not specifically identify the men who were shooting, he testified that they were the same men with whom the victim had argued inside the bowling alley. At trial, Malone testified that he recognized defendant Snider as having been inside the bowling alley that evening. Jason Rains, an independent witness whose car was shot multiple times in the bowling alley parking lot, testified that he saw three males in a car, two of whom had guns.

## II. Defendant Powers' Issues in Docket No. 259606

### A. Sufficiency of the Evidence

Defendant Powers argues that the evidence was insufficient to sustain his conviction of assault with intent to cause great bodily harm less than murder. Defendant claims that there was insufficient evidence to establish his identity or to show a specific intent to commit great bodily harm less than murder. We disagree.

When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). We will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses. *Id.* at 514-515. Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of a crime, including the identity of the perpetrator. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996); *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

“Assault with intent to commit great bodily harm less than murder requires proof of (1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder.” *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997) (parentheses in original).

Identity is always an essential element in a criminal prosecution, *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976), and the prosecution must prove the identity of the defendant as the perpetrator of a charged offense beyond a reasonable doubt. *Kern, supra* at 409. Defendant Powers argues that evidence at trial concerning his identity was insufficient because there was conflicting testimony regarding the descriptions of the shooters, the parking lot was dark, some witnesses could not identify him, and the two witnesses who identified him as possessing a gun were not credible. Defendant Powers therefore asserts that there was insufficient evidence that he was “ever even in the parking lot.”

When the evidence is viewed in a light most favorable to the prosecution, defendant Powers' claim fails because it requires us to ignore the testimony of the victim and Caldwell, both of whom identified defendant Powers as one of the men pointing a gun toward the victim outside the bowling alley. Moreover, defendant Powers would have us disregard the testimony of other witnesses who testified that he was at the scene just before the shooting and was subsequently in the parking lot. This we decline to do. As noted above, it is the province of the jury to determine the weight and credibility of the witnesses' testimony. *Wolfe, supra* at 514-515. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to reasonably find that defendant Powers was at the bowling alley and that he was one of the shooters.

Contrary to what defendant Powers argues, it was not necessary for each person who witnessed the event to specifically identify him in order to establish his guilt. Moreover, defendant Powers' challenge to the sufficiency of the evidence amounts to a challenge of the jury's determination of witness credibility. Absent compelling circumstances, which are not present here, the credibility of witnesses is for the jury to determine. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). Because the jury is to determine the credibility of

identification testimony, we will not resolve that question anew. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). The jury was entitled to accept or reject any of the evidence presented. See *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999).

Defendant Powers also argues that, even if the jury reasonably found that he was in the parking lot with a gun, there was no evidence to establish the requisite intent. Defendant claims that, at most, the evidence showed that he and his associates “took part at randomly firing a gun in a parking lot.”

Viewed in a light most favorable to the prosecution, the evidence was sufficient for a rational trier of fact to find that the requisite intent for the crime was proven beyond a reasonable doubt. The intent to cause great bodily harm less than murder may be inferred from facts in evidence, including a defendant’s conduct; because an actor’s state of mind is difficult to prove, only minimal circumstantial evidence is required. *Parcha, supra* at 239; *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985). As previously indicated, before the shooting, there was a verbal altercation inside the bowling alley. There was also evidence of a brief argumentative exchange involving the same men outside the bowling alley before shots were fired. The victim and Caldwell testified that defendant Powers was one of the men pointing a gun toward the victim and his group before shots were fired. The evidence showed that more than 22 bullets from three different weapons were fired as the victim stood at the bowling alley’s entrance. The victim was shot in the face, chest, and arm. Viewed in a light most favorable to the prosecution, there was sufficient evidence that defendant Powers assaulted the victim with the specific intent to do great bodily harm less than murder.

#### B. Jury Instructions

Defendant Powers next argues that the trial court erred in refusing to instruct the jury on the lesser-included misdemeanor offenses of intentionally aiming a firearm without malice, MCL 750.233, and discharge of a firearm aimed intentionally but without malice, MCL 750.234.<sup>2</sup> We disagree.

In *People v Cornell*, 466 Mich 335, 354-355; 646 NW2d 127 (2002), our Supreme Court concluded that MCL 768.32 only permits instruction on necessarily included lesser offenses, not cognate lesser offenses. “A necessarily included offense is one that must be committed as part of the greater offense; it would be ‘impossible to commit the greater offense without first having committed the lesser.’” *People v Alter*, 255 Mich App 194, 199; 659 NW2d 667 (2003) (citations omitted). “In other words, if a lesser offense is a necessarily included offense, the evidence at trial will always support the lesser offense if it supports the greater.” *Id.* A cognate

---

<sup>2</sup> It appears that defendant Powers may also be arguing that the jury should have been instructed on other lesser-included offenses as well. However, to the extent that he makes any such arguments, they are not properly presented for review because they were not raised in the statement of questions involved as required by MCR 7.212(C)(5). *People v Miller*, 238 Mich App 168, 172; 604 NW2d 781 (1999).

lesser offense is one that shares some common elements with and is of the same class as the greater offense, but also has elements not found in the greater. *Perry, supra* at 61.

We review de novo the determination whether a given crime constitutes a lesser included offense. *People v Mendoza*, 468 Mich 527, 531; 664 NW2d 685 (2003).

Contrary to defendant Powers' proposition, neither intentionally aiming a firearm without malice, nor discharge of a firearm aimed intentionally but without malice, is a necessarily included offense of assault with intent to commit murder or assault with intent to commit great bodily harm less than murder. A person can commit the offenses of assault with intent to commit murder and assault with intent to commit great bodily harm less than murder without intentionally aiming a firearm without malice or discharging a firearm aimed intentionally but without malice. In other words, while the plain language of both MCL 750.233<sup>3</sup> and MCL 750.234<sup>4</sup> require the use of a firearm, the use of a firearm is not an element of MCL 750.83 or MCL 750.84. Because the misdemeanor offenses at issue are not necessarily included lesser offenses of assault with intent to commit murder or assault with intent to commit great bodily harm less than murder, the trial court's failure to instruct the jury on those offenses was not error. *Cornell, supra*; see also *People v Lowery*, 258 Mich App 167, 173-174; 673 NW2d 107 (2003).

### III. Defendant Snider's Issues in Docket No. 259607

#### A. Sufficiency of the Evidence

Defendant Snider claims that the evidence was insufficient to establish his identity as a perpetrator. We disagree.

Viewed in a light most favorable to the prosecution, the evidence was sufficient for a rational trier of fact to find that defendant Snider was one of the shooters. Like codefendant Powers, defendant Snider's claim fails because his assertion that there was no credible evidence to establish his identity requires this Court to ignore the testimony of two eyewitnesses, i.e., Gillson and Hudson, who identified defendant Snider as one of the men pointing a gun toward the victim outside the bowling alley. Moreover, defendant Snider would have this Court disregard the testimony that, shortly before the shooting, he engaged in a verbal altercation with the victim inside the bowling alley. The credibility of the testimony regarding identification was for the jury to resolve. *Davis, supra* at 700; *Perry, supra* at 63. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to reasonably conclude that defendant Snider was at the bowling alley and was one of the shooters.

---

<sup>3</sup> MCL 750.233(1) provides that "[a] person who intentionally but without malice points or aims a firearm at or toward another person is guilty of a misdemeanor[.]"

<sup>4</sup> MCL 750.234(1) provides that "[a] person who discharges a firearm while it is intentionally but without malice aimed at or toward another person, without injuring another person, is guilty of a misdemeanor[.]"

We note that defendant Snider suggests that the identification procedures involving some of the eyewitnesses were unnecessarily suggestive. Although identification procedures that are unnecessarily suggestive and conducive to irreparable misidentification defy due process, *People v Williams*, 244 Mich App 533, 542; 624 NW2d 575 (2001), the record contains no indication that any impermissible or unduly suggestive identification procedures occurred here. Further, apart from his general assertion, defendant Snider has not cited any support for his claim.<sup>5</sup> An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give an issue only cursory treatment with little or no citation of supporting authority. *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001). In light of defendant Snider's incomplete and cursory argument, this argument is abandoned.

#### B. Sentence

Finally, defendant Snider contends that he is entitled to resentencing because his sentence for assault with intent to commit great bodily harm less than murder is disproportionate.<sup>6</sup> Again, we disagree.

Defendant Snider's sentence of 23 to 120 months is within the applicable statutory sentencing guidelines range of 5 to 23 months. We will affirm a sentence that is within the applicable guidelines range absent an error in the scoring of the guidelines or reliance on inaccurate information in determining the sentence. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 310-311; 684 NW2d 669 (2004). On appeal, defendant Snider has not shown that the guidelines were erroneously scored or that the trial court relied on inaccurate information in determining his sentence. Therefore, we do not disturb his sentence.

Affirmed.

/s/ Kathleen Jansen

/s/ Janet T. Neff

/s/ Brian K. Zahra

---

<sup>5</sup> Defendant Snider offers only general speculation with his statement that "the two identifying witnesses['] perceptions appeared to improve over time." In the absence of any evidence of impropriety, this claim merely constitutes a challenge to the credibility of the witnesses.

<sup>6</sup> Defendant Snider argues that "the fact that [he] had no criminal history strongly suggests that the highest end of the guidelines is disproportionate."